

January 7, 2020

Mr. Henry A. Leskinen
Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, Maryland 21057

Re: 11646 Manor Road
Forest Conservation Special Variance
Tracking #03-19-3112

Dear Mr. Leskinen:

A request for a variance from Baltimore County's Forest Conservation Law was received by the Department of Environmental Protection and Sustainability (DEPS) on November 22, 2019. The 3.2 ±-acre property is zoned RC-6 (Rural Conservation and Residential) and existing forest on-site is 2.1± acres. The property is part of a four-lot subdivision, created decades ago, known as the Kirsch Property. All of the forest onsite is considered moderate priority for retention due to its good structural diversity score and the presence of specimen trees. The site plan proposes to clear 1.2± acres of forest, and to retain 1.0± acre in Forest Conservation Easement(s). The clearing proposed is for the construction of a single-family dwelling, access driveway, septic and reserve area, well, and yard. The footprint of the proposed dwelling is similar to those of the existing dwellings in the general surrounding neighborhood. Construction of the project will require impact to 8 of the 15 specimen trees within the forest onsite, which necessitated this variance application.

The property, located in the Glen Arm section of Baltimore County, is situated on the west side of Manor Road and south of Wythe Court. The project site is vacant. Forest on the site consists of a mature mixed oak/tulip poplar association. A high pressure gas line easement crosses the site and a panhandle strip provides access to Manor Road. According to the preliminary Forest Conservation Plan submitted with the Report, the 8 specimen trees to be removed consist of Red oak, Tulip poplar and Chestnut oak, ranging in size from 30 inches to 49 inches in diameter at breast height, in good to poor condition.

The lot comprises 3.2 acres. Approximately 0.5 acre of this area is the gas line easement and another 0.6 acre is the panhandle strip, providing access to Manor Road. One (1) acre of forest will be retained as a Forest Conservation Easement. The remaining development area is 1.1 acres. This relatively small development area is required for the construction activities stated above. The 8 specimen trees proposed for removal are scattered throughout the site. After alternate layouts were explored by the engineer to avoid specimen tree impacts, it was determined that each layout would impact the same quantity of specimen trees, in different locations.

The Director of DEPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d) must be met, and all three of the criteria under Subsection 33-6-116 (e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The applicant proposes to remove 8 of the 15 specimen trees onsite, located within existing forest. Section 33-6-111(b) states, in part, that areas considered priority for retention shall be left in an undisturbed condition unless the applicant has demonstrated to the satisfaction of the Department that reasonable efforts have been made to protect them, that the plan cannot be reasonably altered, and the plan complies with all other applicable laws. Denying this variance request would deprive the applicant of all beneficial use of the property, because it would not be possible to develop the property without impact the 8 specimen trees. The applicant has demonstrated to the satisfaction of the Department, through an approved Forest Retention Investigation Report, why the trees cannot be left in an undisturbed condition, that reasonable efforts have been made to protect them and that the plan cannot be reasonably altered. Therefore, this criterion is met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. The variance request arises from a unique situation concerning the locations of the specimen trees and their scattered nature on the site, the fact that the site is mostly forested, the area of the property that can be developed, and the infrastructure requirements. The development proposal is based on these unique conditions of the property, and not from general conditions of the neighborhood. Therefore, this criterion is met.

The third criterion (Subsection 33-6-116 (d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. This 3.2 acre property is bounded on the north, east and south by single-family dwellings on lots of similar sizes, most of which contain forest, and on the west by hundreds of acres of forested Loch Raven Reservoir property, owned by the City of Baltimore. The reservoir is located approximately 1,500 linear feet west of the subject site. Of the 3.2 acres, 1.0 acre will be protected by Forest Conservations Easements. Therefore, the proposed development of the site would be compatible with, and not alter the essential character of the neighborhood, and this criterion is met.

The fourth criterion (Subsection 33-6-116 (e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. One acre of forest onsite will be retained in perpetuity by the recordation of Forest Conservation Easements in the Baltimore

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County Land Records along with the associated Declaration of Protective Covenants. In addition, the contiguous forest to the property's west, associated with the Loch Raven Reservoir will assure that water quality will not be adversely affected. Therefore, this criterion is met.

The fifth criterion (Subsection 33-6-116 (e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance, which is the result of actions taken by the petitioner. The petitioner has not taken any action on the property that would necessitate this variance request. Therefore, this criterion is met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of DEPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. The 8 specimen trees to be impacted, as identified on the plan, cannot be retained without severely impacting or prohibiting the feasibility of the project. Denying this variance would deprive the applicant of a reasonable use of the property. The applicant has demonstrated to the satisfaction of this Department why these priority areas for retention cannot be left in an undisturbed condition, that reasonable efforts have been made to protect them and that the plan cannot be reasonably altered. The 8 specimen trees to be impacted are located within existing forest, and the applicant is required by the law to mitigate forest impacts by meeting all forest conservation requirements. In this case, requirements will be met by forest retention onsite, and either by the payment of a fee-in-lieu of planting, or by the purchase of 1.0 acre of credit at an approved, offsite forest conservation planting bank.. Therefore, this criterion is met for the removal of the 8 specimen trees shown on the plan with this variance request.

Based upon our review, this Department finds that the required variance criteria have been met for the removal of the 8 specimen trees identified on the plan. Therefore, the variance is hereby approved for the removal of those specific specimen trees, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. Meeting forest conservation requirements, per the approved Forest Conservation Worksheet and Forest Conservation Plan (FCP), will provide any necessary mitigation for the impact to the 8 specimen trees to be removed, shown on the plan with this variance request, as these trees exist within forest.
2. Prior to the issuance of any permit, the Forest Conservation Easements must be recorded in the Baltimore County Land Records, along with the associated Declaration of Protective Covenants.
3. A final Forest Conservation Plan for this project must be approved prior to the approval of any permit.
4. Prior to the issuance of any permit, and in accordance with the approved FCP, temporary, high-visibility fence, permanent, protective signage, and root pruning shall be completed by others and inspected and approved by DEPS.

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5. A note must be added to all plans stating that a variance was granted by this Department to allow for impacts to 8 specimen trees on this project site, and that mitigation was provided by the payment of a fee-in-lieu of planting for 1 acre of required reforestation, or by the purchase of 1 acre of credit at an approved forest conservation planting bank.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended, or new variance request. Please have the property owner sign the statement below and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy within 21 calendar days may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Thomas Panzarella at (410) 887-3980.

Sincerely yours,

David V. Lykens
Director

DVL/tcp

c: Marian Honecny MDDNR

I/we agree to the above conditions to bring my/our property, located at 11646 Manor Road, into compliance with the Baltimore County Forest Conservation Law.

Property Owner(s)	Date
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Printed Name(s) of Owner(s)